

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:23-cr-0038
)	
IRVING JHON MENDOZA-ALCANTARA,)	
)	
Defendant.)	
)	

ORDER

BEFORE THE COURT is Defendant Irving Jhon Mendoza-Alcantara's ("Mendoza-Alcantara") Amended Unopposed Motion to Continue Trial scheduled for September 11, 2023. (ECF No. 59.) For the reasons stated herein, the Court will grant the motion. The time to try this case is extended up to and including November 13, 2023.

This matter commenced on June 6, 2023, when the United States (the "Government") filed a Complaint. On July 14, 2023, the Government filed an Information, charging Mendoza-Alcantara with illegal entry, in violation of 8 U.S.C. § 1325(a). (ECF No. 44.) He was arraigned on July 27, 2023. Mendoza-Alcantara filed the instant motion asserting that he has applied for asylum pursuant to the Immigration and Nationality Act and the continuance is necessary because he is awaiting documents which will support his alibi in defense of the allegations against him. (ECF No. 59).

While the Speedy Trial Act (the "Act") requires that defendants be tried within seventy days of indictment, the Act specifically excludes:

[a]ny period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

18 U.S.C. § 3161(h)(1)(A).

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Consistent with these concerns, the United States Court of Appeals for the Third Circuit has recognized that “whether or not a case is ‘unusual’ or ‘complex,’ an ‘ends of justice’ continuance may in appropriate circumstances be granted.” *United States v. Fields*, 39 F.3d 439, 444 (3d Cir. 1994); *United States v. Dota*, 33 F.3d 1179 (9th Cir. 1994) (“An ends of justice continuance may be justified on grounds that one side needs more time to prepare for trial [even if the] case [i]s not ‘complex.’”); *see also United States v. Lattany*, 982 F.2d 866, 883 (3d Cir. 1992) (“[T]he district court did not abuse its discretion when it delayed the trial to give counsel . . . opportunity to . . . decid[e] upon and prepar[e] an appropriate defense.”); *see United States v. Graves*, 722 F.3d 544 (3d Cir. 2013) (“The Act excludes periods of delay ‘resulting from a continuance granted by a judge,’ as long as the judge has found ‘that the ends of justice’ served by the continuance ‘outweigh the best interest of the public and the defendant in a speedy trial.’”).

The Court finds that the ends of justice served by extending the period in which the trial must begin in this matter outweighs the best interest of the public and the defendant in a speedy trial. Here, an extension of time is necessary to allow Defendant sufficient time to prepare an adequate defense. The premises considered, it is hereby

ORDERED that the Defendant’s Motion to Continue Trial, ECF No. 59, is **GRANTED**; it is further

ORDERED that the time beginning from the date of this order granting an extension through November 13, 2023, **SHALL** be excluded in computing the time within which the trial in this matter must be initiated pursuant to 18 U.S.C. § 3161; it is further

ORDERED that the parties **SHALL** file and serve a pre-trial brief no later than **November 3, 2023** which shall include the following: (a) proposed list of witnesses; (b) proposed list of exhibits; (c) estimated length of case-in-chief and case-in-defense; (d) proposed non-standard *voir dire* questions; and (e) proposed non-standard jury instructions related to the elements of the charges and defenses; it is further

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ORDERED that the parties **SHALL** provide the Clerk of Court with a USB Flash Drive containing electronic versions of exhibits no later than **November 10, 2023**;¹ and it is further

ORDERED that the Jury Selection and Trial in this matter previously scheduled for September 11, 2023, are **RESCHEDULED** to commence promptly at 9:00 A.M. on **November 13, 2023**, in St. Thomas Courtroom 1.

Dated: September 7, 2023

/s/ Robert A. Molloy
ROBERT A. MOLLOY
Chief Judge

¹ Counsel are advised to consult with Court technical staff to determine the proper format for saving electronic versions of exhibits. The Government's trial exhibits shall be labelled sequentially beginning with Government's Exhibit 1. Defense exhibits shall be labelled sequentially beginning with Defense Exhibit A.